

Attachment 3

GAO

Report to the Chairman, Subcommittee
on National Security, Veterans Affairs,
and International Relations, Committee
on Government Reform, House of
Representatives

October 2002

BORDER SECURITY

Visa Process Should Be Strengthened as an Antiterrorism Tool



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Abbreviations

CIA	Central Intelligence Agency
CLASS	Consular Lookout and Support System
FBI	Federal Bureau of Investigation
INA	Immigration and Nationality Act



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United States General Accounting Office
Washington, D.C. 20548

October 21, 2002

The Honorable Christopher Shays
Chairman, Subcommittee on National Security, Veterans Affairs, and
International Relations
Committee on Government Reform
House of Representatives

Dear Mr. Chairman:

Citizens of other countries seeking to enter the United States temporarily for business, tourism, and other reasons generally must apply for and obtain a U.S. travel document, called a nonimmigrant visa,¹ at U.S. embassies or consulates abroad before arriving at U.S. ports of entry.² State Department consular officers issued 7.6 million visas in fiscal year 2001. In deciding who should and should not receive a visa, consular officers must perform a risk assessment that balances the need to facilitate legitimate travel with the need to protect the United States against potential terrorists and to deter others whose entry is considered likely to be harmful to U.S. national interests. The President has proposed the establishment of a Department of Homeland Security and has called for visa policy-making authority to be transferred to this new department, while retaining administration of visas within the State Department. The Congress is studying this proposal and considering how the visa function should be organized. Because all 19 of the September 11, 2001, terrorist hijackers were issued visas, strengthening the visa function as an antiterrorism tool has taken on great significance.

At your request, we began in November 2001 to assess (1) how the visa process operated prior to September 11, 2001; and (2) what changes have occurred since then to strengthen the process as a screen against terrorists.

To assess how the visa process operated prior to and following September 11, we analyzed the fundamental factors influencing visa decisions, including the policies and guidance for, and pressures on, consular officers;

¹The United States also grants visas to people who intend to immigrate to the United States. In this report, we use the term "visa" to refer to nonimmigrant visas only.

²Citizens of 28 countries that participate in the visa waiver program, Canada, and certain other locations are not required to obtain visas for business or pleasure stays of short duration.

the U.S. government's processes for checking visa applicants against available security and intelligence data; and staffing and resource issues. We reviewed the 1952 Immigration and Nationality Act (P.L. 82-414), as amended, and related legislation; the State Department's Foreign Affairs Manual and other guidance; consular workload and staffing data, and other related documents from the State Department's Bureau of Consular Affairs. We observed visa operations at U.S. embassies and consulates in eight countries—Canada, Egypt, Germany, Indonesia, Saudi Arabia, Tunisia, the United Arab Emirates, and the United Kingdom. We chose these visa operations because they either had issued a visa to one of the 19 terrorist hijackers or had issued a large number of visas to citizens from countries of potential terrorism concern. In Washington, D.C., we interviewed officials from the Departments of State, Defense, and Justice, including the Federal Bureau of Investigation (FBI) and the Immigration and Naturalization Service. We completed our fieldwork in May 2002, prior to the President's proposal to establish a Department of Homeland Security, and our scope did not include consideration of the organizational options for reforming the visa process contained therein. Our analyses and recommendations, however, focus on fundamental operational issues that need to be urgently addressed, regardless of any subsequent organizational decisions to alter responsibility for various aspects of the visa function. Appendix I provides more information on our scope and methodology.

Results in Brief

Prior to the September 11 attacks, the State Department's visa operations focused primarily on screening applicants to determine whether they intended to work or reside illegally in the United States. In making decisions on who should receive a visa, consular officers relied on the State Department's consular "lookout" system, a name check system that incorporates information from many agencies, as the primary basis for identifying potential terrorists. Consular officers were encouraged to facilitate legitimate travel and, at some posts we visited, faced pressures to issue visas. The State Department gave overseas consular sections substantial discretion in determining the level of scrutiny applied to visa applications and encouraged streamlined procedures to provide customer service and deal with a large workload. As a result, according to State Department officials, consular sections worldwide adopted practices that reduced the amount of time for reviewing visa applications. For example, some posts decided not to interview applicants who were considered good

risks—persons who were thought likely to return to their country at the end of their allotted time in the United States.³

Since September 11, the U.S. government has introduced some changes to strengthen the visa process. For example, the State Department has, with the help of other agencies, almost doubled the number of names and the amount of information in the lookout system. Further, the department began seeking new or additional interagency clearances on selected applicants to screen out terrorists, although these checks were not always completed by other U.S. agencies in a thorough or timely manner. We also observed that consular officers at some of the posts we visited were spending more time reviewing visa applications and interviewing applicants; they were able to do so, at least temporarily, because the number of visa applications decreased dramatically after September 11.

While these actions have strengthened the visa process, there continues to be a wide divergence of opinions and practices among and within overseas posts regarding (1) the authority of consular officers to deny questionable applicants a visa, (2) the role of the visa process in ensuring national security, and (3) the types of changes in posts' visa policies and procedures that are appropriate given the need for heightened border security. Also, there is a disagreement between the Departments of State and Justice on the evidence needed to deny a visa on terrorism grounds. Most of the consular officers at the posts we visited believed that more comprehensive guidance and training would help them to use the visa process as an antiterrorism tool to detect questionable applicants. In addition, more consular staff and use of new technology may be needed in the future to help consular sections identify potential terrorists who should not receive visas. In July 2002, the Secretary of State acknowledged that the visa process needed to be strengthened and indicated that the State Department is working to identify areas for improvement.

In this regard, we are making recommendations to the Secretary of State to strengthen the visa process as a tool to prevent terrorists from entering the United States. Specifically, we are recommending that the Secretary, in consultation with appropriate agencies

³At the port of entry, an inspector from the Immigration and Naturalization Service determines whether the visa holder is admitted to the United States and, if so, for how long he or she may remain in the country.

-
- develop a clear policy on the priority attached to addressing national security concerns through the visa process, and
 - develop more comprehensive, risk-based guidelines and standards on how consular officers should use the visa process as a screen against potential terrorists.

Based on this policy and guidance, we are also recommending that the Secretary of State

- fundamentally reassess staffing requirements for visa operations, and
- revamp and expand consular training.

There also is a need to improve coordination between the State Department and other vitally important agencies across government to realize the full potential of the visa process in safeguarding U.S. interests. Accordingly, we are also making recommendations to the Assistant to the President for Homeland Security because of his role in promoting and coordinating homeland security across federal departments and agencies.⁴ Specifically, we are recommending that he coordinate with the appropriate agencies to

- establish a governmentwide policy on the level of evidence needed to deny a visa on terrorism grounds;
- reassess interagency headquarters security checks to verify that all are necessary and ensure their timely coordination among U.S. agencies;
- consider reassessing, on an interagency basis, visas issued before the implementation of new security checks for selected categories of applicants who may pose security risks;

⁴The Assistant to the President for Homeland Security chairs the Homeland Security Council's Principals Committee, the senior interagency forum under the Homeland Security Council. Established on October 8, 2001, the Council is responsible for advising and assisting the President with respect to all aspects of homeland security. It is the mechanism for ensuring coordination of homeland security-related activities among executive branch departments and agencies and promoting the effective development and implementation of all homeland security policies.

-
- reexamine visa operations on a regular basis to ensure that they are effectively contributing to the national strategy for homeland security and that they appropriately anticipate and consider changes in the security environment, technology, and government organization; and
 - ensure that law enforcement and intelligence agencies are promptly providing information to the State Department on persons who may pose a security risk and who, therefore, should not receive a visa.

We provided a draft of this report to the Office of Homeland Security and the Departments of State and Justice for their comments. The Office of Homeland Security did not comment on the report. The State Department said that it found the report to be thorough and balanced, noting that the recommendations would be useful in its ongoing reexamination of visa processes and procedures. The State Department also identified steps it has taken to implement a number of the recommendations and said it plans to implement other recommendations on an interagency basis. The Department of Justice did not comment on the recommendations. The department provided additional information on (1) the evidentiary standard for adjudicating visa applications from individuals who may present a risk to national security, and (2) the procedures for and its timeliness in completing name checks of visa applicants instituted after September 11, 2001. We modified our text to reflect this additional information.

Background

The 1952 Immigration and Nationality Act (INA) is the primary body of law governing immigration and visa operations.⁵ Among other functions, the INA defines the powers given to the Attorney General, the Secretary of State, immigration officers, and consular officers; delineates categories of and qualifications for immigrant and nonimmigrant visas; and provides a broad framework of operations through which foreign citizens are allowed to enter and immigrate to the United States. The State Department and the Immigration and Naturalization Service issue regulations governing visa issuance and processing that further explain and augment the INA. For

⁵The 1952 Immigration and Nationality Act (P.L. 82-414; 8 U.S.C. § 1101 et seq.) has been amended several times since 1952, more recently by the Immigration Act of 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), the USA PATRIOT Act of 2001 (P.L. 107-56), and the Enhanced Border Security and Visa Entry Reform Act of 2002 (P.L. 107-173).

example, one regulation codified in the Code of Federal Regulations at 22 C.F.R. § 41.121 describes procedures and review requirements for nonimmigrant visa refusals.

The State Department's policy guidance to visa officers consists of the *Foreign Affairs Manual*, instruction telegrams, informal communications, the *Consular Management Handbook*, and the *Consular Best Practices Handbook*. The *Foreign Affairs Manual* contains regulations, policies, and procedures for the department's operations and provides interpretive guidance to visa officers on the sections of the INA and the Code of Federal Regulations related to the visa process. From January 1997 through April 2000, the State Department issued a series of cables to posts that comprised the *Consular Best Practices Handbook*.

The 19 September 11, 2001, hijackers received a total of 23 visas at five different posts from April 1997 through June 2001 (see app. II).⁶ Fifteen of them were citizens of Saudi Arabia. They obtained their visas in their home country, at the U.S. consulate in Jeddah (11 hijackers) and the U.S. embassy in Riyadh (4 hijackers). Two others, citizens of the United Arab Emirates, also received their visas in their home country, at the U.S. embassy in Abu Dhabi and at the U.S. consulate in Dubai. The remaining 2 hijackers obtained their visas at the U.S. embassy in Berlin. They were considered third-country national applicants because they were not German citizens: 1 was a citizen of Egypt, the other of Lebanon. Of the 19 hijackers, 18 received visas for temporary visits for business and pleasure, and 1 received two student visas. These visas allowed the holders to enter the United States multiple times during the visas' validity period, subject to the approval of the immigration officer at the port of entry.⁷ Of the 23 issued visas, 4 were valid for a period of 1 year, 15 were valid for 2 years, 2 for 5 years, and 2 for 10 years.

⁶The scope of our review did not cover visas that were issued before this time period.

⁷The State Department establishes the maximum number of entries and the maximum period that a visa is valid for an applicant based on reciprocity, that is, according to the treatment that the applicant's country affords U.S. citizens traveling there for the same purpose. The validity of a visa issued at a consular post abroad is not related to the length of stay which the Immigration and Naturalization Service may authorize the visa holder upon his or her entry to the United States, nor is it related to the length or number of extensions of stay that may later be granted by the Immigration and Naturalization Service.

Pre-September 11 Visa Process Tried to Meet Multiple Goals

The process for determining who will be issued or refused a visa contains several steps, including documentation reviews, optional interviews, and an applicant name check on the Consular Lookout and Support System (CLASS). The State Department indicated that at most overseas posts, consular officers relied primarily on the CLASS name check system to detect possible terrorists and did not place a special emphasis on using other elements of the visa process, such as interviews and application reviews, as an antiterrorism tool. The department's policies before September 11 gave posts a great deal of discretion in determining how the visa process would operate and encouraged posts to promote international travel, manage an increasing workload, and improve customer service for visa applicants. The policies also suggested ways to reduce the time spent reviewing applications. Consistent with this guidance, the posts we visited, including the five posts that issued visas to the 19 hijackers, established policies and procedures that lessened consular officers' involvement in key parts of the visa process. At the same time, some consular officers faced pressures to issue visas to applicants.

How the Visa Process Works

Under the INA, the State Department is charged with administering visa process functions. The State Department has 211 visa-issuing posts around the world and 843 consular officer positions that it funds using fees collected from visa applicants for machine-readable visas.⁸ In addition to these specially funded positions, a number of other consular officers are funded by State program funds or by other U.S. agencies. At some posts, eligible U.S. citizen family members of U.S. officers have been trained in consular work, have obtained security clearances, and are designated as consular associates to enable them to perform consular work. The incumbent officers are directly responsible for issuing or refusing visas. Their decision to grant or deny a visa is not subject to judicial review.⁹ Foreign Service officers in all of the State Department's functional areas—

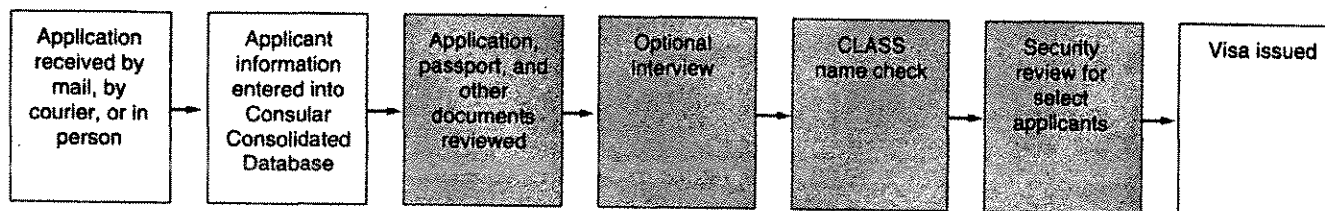
⁸Consular officers also provide services to U.S. citizens living or traveling overseas. According to a State Department official, about 80 percent of consular officers work on visa services, while the remainder work on U.S. citizen services.

⁹The courts have long held that a consular officer's decision to grant or deny a visa is not subject to judicial review. See, e.g., *Centeno v. Schultz*, 817 F.2d 1212 (5th Cir. 1987), cert. denied, 484 U.S. 1005 (1988); *Li Hing of Hong Kong, Inc. v. Levin*, 800 F.2d 970 (9th Cir. 1986); *Ventura-Escamilla v. INS*, 647 F.2d 28 (9th Cir. 1981); *Rivera de Gomez v. Kissinger*, 534 F.2d 518 (2d Cir.), cert. denied, 429 U.S. 897 (1976); *U.S. ex rel. Ulrich v. Kellogg*, 30 F.2d 984 (D.C. Cir.), cert. denied, 279 U.S. 868 (1929).

political, economic, administrative, public diplomacy, and consular—typically begin their careers by serving a tour of duty adjudicating visas. Consular sections range in size from small posts with 1 consular officer to large posts with more than 30 officers. They also employ local staff, known as Foreign Service National staff, to assist with basic data input, translation, fraud prevention, and visa printing.¹⁰ Local staff are not permitted to issue visas.

The process of determining who will receive a visa has several steps (see fig. 1). The consular workload associated with this process depends on a number of factors, including (1) the number of visa applications that a post receives, (2) the amount of time that the consular officers and local Foreign Service National staff spend reviewing the applications and supporting documents, (3) the number and length of applicant interviews, and (4) the number of times that applicants must come back to the post to provide additional documents or other information. Depending on a post's applicant pool, each stage of the visa process varies in length. For example, at posts in countries with a high incidence of document fraud, the document review stage may take more time if consular staff rigorously screen an applicant's documents. Similarly, posts in countries undergoing political or economic turmoil may require more personal interviews with applicants to assess their eligibility for visas.

Figure 1: Nonimmigrant Visa Issuance or Refusal Process



Points at which visa could be refused

Note: The interview and CLASS name check may occur at the same time, or the CLASS name check may precede the interview.

Source: GAO analysis of State Department documents and visa operations.

¹⁰At most of the posts we visited, there were about two to four local staff for every one U.S. consular officer.

Visas for temporary visits for business and pleasure—the most popular type of visa—accounted for about 79 percent of all 7.6 million visas issued in fiscal year 2001. Special worker visas—the second most popular—made up about 4.6 percent, followed by student visas at 4.2 percent and exchange visas at 4 percent.

By law, the burden of proof is on the applicant to demonstrate to the consular officer that he or she is eligible for a visa. In fiscal year 2000, consular officers refused about 1.96 million visas (79.8 percent of all refused visas) under INA section 214(b).¹¹ This provision states that each foreign citizen “shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer....that he is entitled to a nonimmigrant status.” For the most common categories of visas,¹² this means that applicants must demonstrate that they

- (1) have a residence abroad that they do not intend to abandon, as evidenced by such factors as applicants’ strong economic, social, or other ties to a foreign country;
- (2) intend to leave the United States after a limited time; and
- (3) intend to engage in legitimate activities related to that nonimmigrant category.

In fiscal year 2000, consular officers also refused 471,523 visas (19.2 percent of all refused visas) based on INA section 221(g). This provision is generally used when an applicant lacks required documents or the processing of the application is incomplete, as in the case of additional security checks.¹³ Consular officers based the remaining 1 percent of all visa refusals on one of the many other INA provisions for denying a visa (see app. III). One of these sections, INA section 212(a)(3)(B), contains

¹¹In fiscal year 2000, the State Department refused a total of 2.45 million visas. During that same year, it issued 310,899 visas to applicants who were able to overcome previous visa refusals by presenting evidence that the ineligibility did not apply, by approval of a waiver, or by other relief as provided by law.

¹²INA section 214(b) does not apply to certain categories of nonimmigrant visas, such as special workers, intracompany transferees, and their spouses and children.

¹³Consular officers in London, Frankfurt, and Berlin told us that they use 221(g) refusals as “pseudo-214(b)” refusals for the bulk of the applications they process, because they handle applications by mail and 214(b) refusals require the applicants’ presence.

exclusion provisions based on terrorism-related grounds. In fiscal year 2000, the State Department refused 99 visas under this provision.¹⁴

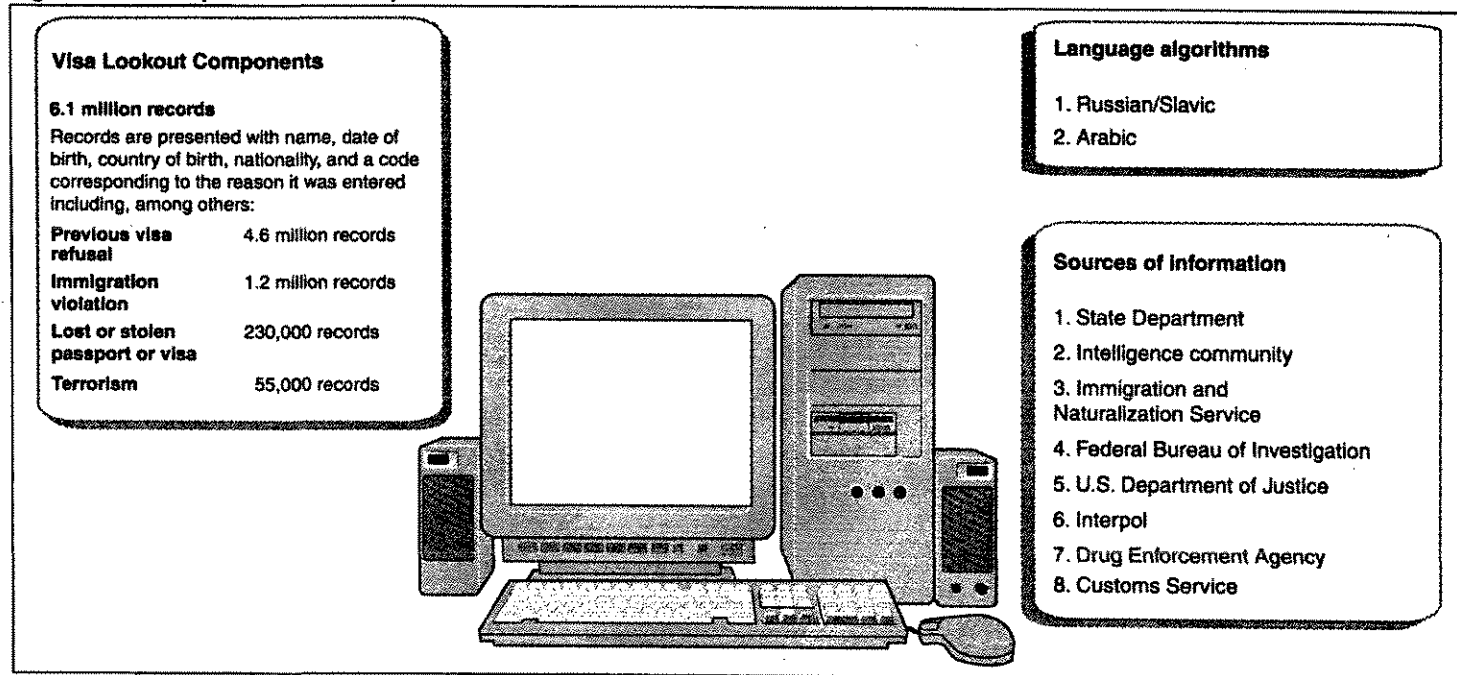
Terrorism Screening Relied Mainly on CLASS Name Checks

For visa applicants of most countries, consular officers relied on a name check system called CLASS to determine if visa applicants were suspected of being terrorists or could pose other security risks (see fig. 2). By law, consular officers must certify that they have conducted a CLASS name check on each applicant to whom a visa is issued and that they have found no information that would form a basis for excluding that applicant from the United States.¹⁵ The *Foreign Affairs Manual* emphasized the consular officer's responsibility to ensure that CLASS name checks have been completed in all cases. In cases where the main CLASS system was not operational, State's policy allowed consular officers to complete visa processing after running a name check through the backup Distributed Namecheck System, a CD-ROM updated monthly by the State Department.

¹⁴In addition, in fiscal year 2000 the State Department issued 31 visas that had been previously refused on terrorism grounds. Visas refused on terrorism grounds can be overcome with a waiver from the Immigration and Naturalization Service.

¹⁵See section 140(c) of Public Law 103-236 (Foreign Relations Authorization Act, Fiscal Years 1994 and 1995).

Figure 2: Pre-September 11 Components of CLASS



Note: The number of visa lookout records before September 11 is a State Department estimate.
Source: State Department.

Before September 11, the majority of the estimated 6.1 million visa lookout records in CLASS came from the State Department's database of visa refusals. CLASS also contained an estimated 48,000 records from the State Department's interagency watch list for terrorists, known as "TIPOFF,"¹⁶ as well as information on about 7,000 people who were refused or could be refused visas for terrorism-related reasons. Other sources for information in CLASS included the Immigration and Naturalization Service, the Drug Enforcement Administration, the FBI, Customs, and other U.S. intelligence community sources. CLASS uses language algorithms to help increase the likelihood that the name check will find a person's name if it is in the

¹⁶As of September 10, 2001, TIPOFF contained 61,474 records in its terrorist watchlist database. After being assessed for relevance and completeness, approximately 48,000 of these records were included in CLASS. Although the majority of CLASS terrorism records derive from TIPOFF, the State Department also adds information on known and suspected terrorists from several other sources.

database. CLASS operates language algorithms for Arabic and Russian/Slavic names.¹⁷

In addition to CLASS, the State Department had special clearance procedures and interagency name checks for visa applicants from certain countries. These procedures, in effect for years before September 11, were designed to screen out persons who could possibly pose a threat to U.S. interests. These included those persons who might engage in espionage or illegal technology transfer, break economic sanctions against countries such as Cuba and Sudan, or commit acts of terrorism. Before September 11, certain citizens from 33 countries required special processing or special clearances, with citizens of 9 being screened for terrorism-related reasons (see app. IV). These included the 7 countries that the United States has designated as state sponsors of terrorism—Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria—plus Afghanistan and Russia (Chechnya).

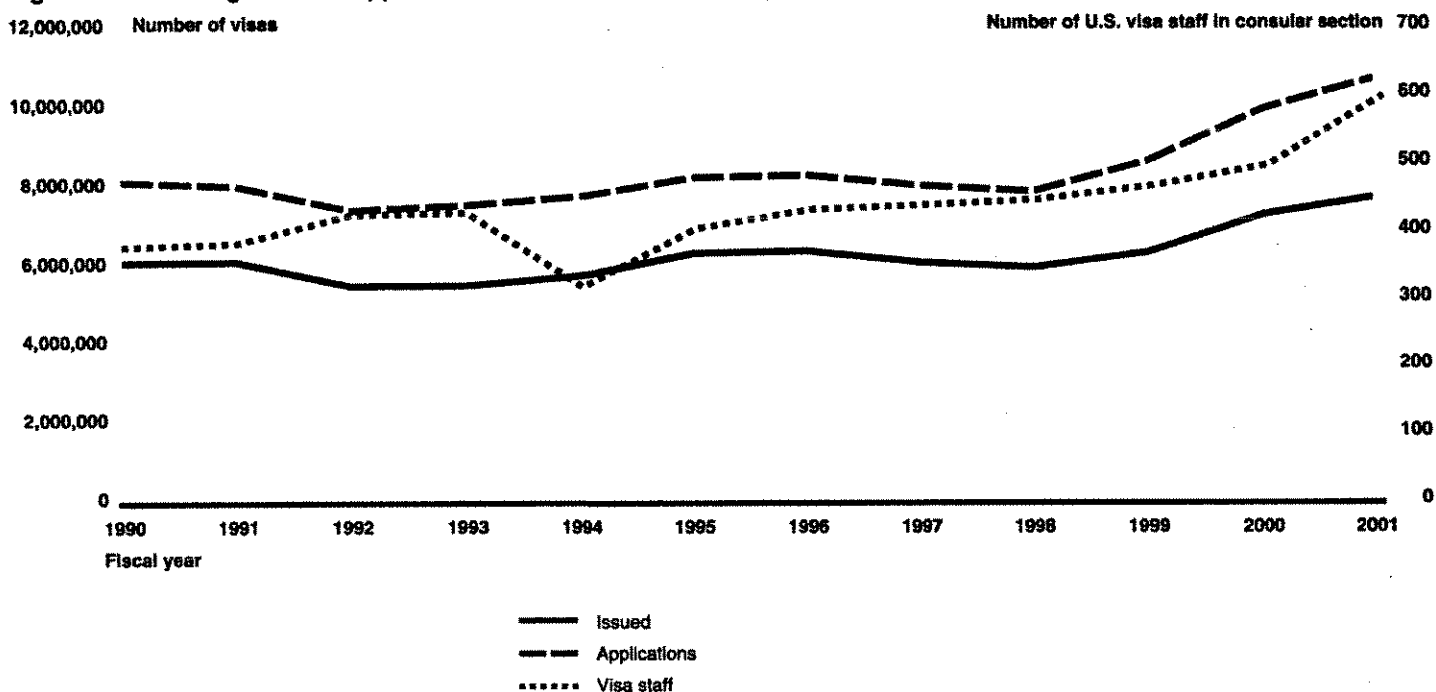
Guidance Allowed Flexibility to Address Travel, Workload, and Customer Service Concerns

As articulated in the *Foreign Affairs Manual*, the State Department's visa policies before September 11 encouraged consular officers to expedite visa processing as a means of promoting travel to the United States. In the section dealing with the most common type of visa, temporary visitor for business and pleasure, the manual stated that it is the U.S. government's policy to facilitate and promote travel and the free movement of people of all nationalities to the United States, both for the cultural and social value to the world and for economic purposes. This section called for consular officers to expedite applications for the issuance of visitor visas, so long as the consular officer was satisfied that the issuance was in accordance with U.S. immigration law and the applicant had overcome the presumption of intending immigration. In explaining visa refusals, the manual stated that while the law places the burden of proof upon applicants to establish that they are eligible to receive a visa, "it is the policy of the U.S. government to give the applicant every reasonable opportunity to establish eligibility."

The State Department's policy guidance also aimed to assist posts worldwide in managing an increasing workload and improving customer service. As shown in figure 3, the number of U.S. visa applications worldwide grew from about 7.7 million to 10.6 million from fiscal year 1998 through fiscal year 2001, an increase of about 37 percent.

¹⁷The State Department has an algorithm for Hispanic names in the final stages of development and is considering the development of an East Asian algorithm.

Figure 3: Nonimmigrant Visa Applications, Issuances, and Staffing, Fiscal Years 1990-2001



Note: Staffing figures are estimates.
 Source: State Department data.

While overall staffing increased with workload, the escalating workload had a negative impact on the operations of individual posts. For example, the U.S. embassy in Cairo experienced about a 45 percent increase in its visa workload from fiscal year 2000 through fiscal year 2001. To handle the increased workload, according to an embassy report on consular operations, existing staff worked unusually long hours interviewing applicants for an extended time period, a pace that led to staff burnout. At times, the consular section also had "extended gaps" when no eligible and qualified consular employee was available to adjudicate visas. In 1998 we reported that many posts faced a backlog of visa applications as a result of

staffing shortages.¹⁸ As late as June 2002, staffing shortages remained common at hardship posts, including the consular sections.¹⁹

To address these concerns, in 1997 and 1998 the State Department's *Consular Best Practices Handbook* directed consular managers throughout the world to explore ways of reducing the amount of time that consular officers spend reviewing individual visa applications. This guide, along with the *Foreign Affairs Manual*, allowed consular staff a great deal of discretion in streamlining their visa operations and in determining what factors to consider in assessing who is eligible to receive a visa. Ordinarily, according to the policy manual, the consular officer was to use the application and interview to determine the applicant's eligibility to receive a visa and the proper nonimmigrant classification. However, the policy guidance gave consular managers and staff the discretion to

- waive the personal appearance and interviews for certain nonimmigrant visa applicants, and in certain limited circumstances, the filing of their visa applications;²⁰
- use third parties, such as travel agencies, to help persons complete applications and to do an initial screening of visa applicants;²¹
- decide the period for which the visa would be valid.

¹⁸See U.S. General Accounting Office, *State Department: Tourist Visa Processing Backlogs Persist at U.S. Consulates*, GAO/NSIAD-98-69 (Washington, D.C.: Mar. 13, 1998).

¹⁹See U.S. General Accounting Office, *State Department: Staffing Shortfalls and Ineffective Assignment System Compromise Diplomatic Readiness at Hardship Posts*, GAO-02-626 (Washington, D.C.: June 18, 2002).

²⁰If the filing of an application was waived, the consular officer was instructed to complete an application form for the applicant, using data available in the passport or other submitted documents. This would ensure that State's database included the essential information normally obtained through the application form. On September 18, 2002, State revised this section of the *Foreign Affairs Manual* to make clear that consular officers should waive the completion of applications only in cases of life-threatening emergencies.

²¹According to the *Foreign Affairs Manual*, the travel agency screening process was to be based largely on financial factors. That is, if the travel agency was reasonably satisfied that the traveler had the means to purchase a tour package, there would be little further evaluation of the applicant's qualifications for a visa. On September 18, 2002, the State Department revised this section of the *Foreign Affairs Manual*, thereby removing this language from the policy guidance. This revision emphasized that no visa adjudication authority may be delegated to any third party entity.

The guidance did not specify what documentation, if any, consular managers or officers must provide to support their decisions to waive personal appearances or interviews, to use third parties to screen visa applicants, or to determine the visa's period of validity.

The *Foreign Affairs Manual* said that posts could not waive the CLASS name check or interviews of certain applicants, such as those whose names showed up in CLASS or who belonged to a group of the post's visa clientele representing a security threat. Specific sections of the manual explained CLASS and special clearance procedures for applicants from certain countries. However, in the section dealing with temporary visitors for business and pleasure, the manual emphasized the importance of facilitating international travel and expediting visas, without mentioning how consular officers should balance these efforts with the need to protect the United States against potential terrorists.

Moreover, the *Foreign Affairs Manual* provided general guidance to consular officers on how they could determine whether an applicant had overcome the presumption of intending immigration. At the same time, it allowed them the discretion to determine what constitutes sufficient proof for this purpose. The manual also encouraged consular officers to complete all processing and issue visas for routine applications on the day of the application's receipt.

Training Focused on Screening Out Intending Immigrants

Training provided to consular officers followed the State Department's policies and guidance—it helped to prepare officers to screen out visa applicants who intended to live or work illegally in the United States and did not focus on using the visa process as an antiterrorism tool. Before reporting to posts, officers received 7 days of training on nonimmigrant visa processing,²² which included basic training on fraud prevention, the CLASS name check process, and interviewing techniques. In addition, according to the State Department, officers also received on-the-job training and guidance from more senior consular managers after arriving at a post. However, as we reported in June 2002, at least some of the State Department's consular sections are staffed with supervisors having less

²²The consular course at the Foreign Service Institute lasts 26 days. In addition to training on nonimmigrant visas, the course includes modules on immigrant visas, American citizen services, and passports.

experience than their position requires.²³ As a result, supervisory coaching may suffer.

Furthermore, the State Department reported that hiring shortfalls in the 1990s had left the department with too few officers and that State had sacrificed training in some cases. For example, in reporting on its workforce planning in fiscal year 2000, the department noted that inadequate staffing had forced the department "to choose between training and deploying its human resources." According to consular officials, this has been a problem for many consular sections around the world. The Consul General at one of the posts we visited said it was difficult to send her consular officers to training when she had no one to take their place. A Cairo consular section report for fiscal year 2001 stated that there was limited time for training, because officers were needed to work at the interview windows for most, if not all, of the day.

Pressures to Issue Visas Existed

Consular officers often faced a variety of pressures to issue visas. For example, applicants who are seeking a visa may become angry, distraught, or threaten physical violence if the visa is denied. In addition, consular and other officials at five posts we visited expressed concern over the use of the posts' referral systems, through which U.S. government personnel may recommend that a visa be issued to someone of official interest to the U.S. government who is well and favorably known to them. At two posts, staff cited examples of Foreign Commercial Service personnel referring visa applicants that they did not know as members of trade delegations visiting the United States.²⁴ Further, according to consular officers whom we interviewed at four posts, the State Department's policy of requiring consular managers to review all visa denials, but not visa issuances, encouraged officers to approve visas to avoid possible supervisory criticism and reversal of their initial decisions. In addition, post officials cited cases of pressure from Members of Congress who sent letters asking why consular officers denied certain visas. In fiscal year 2001, the nonimmigrant visa section in Cairo received 202 congressional inquiries, an average of nearly 4 each week. According to officials from the State Department's Office of Inspector General, ambassadors have occasionally

²³GAO-02-626.

²⁴In April and May 2002, the State Department documented referral program abuse in two additional locations, Lagos, Nigeria, and Santo Domingo, Dominican Republic.

pressured consular managers and officers to issue visas to questionable applicants for political reasons.

Posts Followed Pre-September 11 Policy Guidance

In accordance with the *Foreign Affairs Manual* and *Consular Best Practices Handbook*, all of the posts that we visited, including the five posts that issued visas to the 19 hijackers, had instituted policies and procedures that expedited the application process for certain visa applicants. While intended to improve efficiency, these measures allowed many applicants to obtain a visa without undergoing the close scrutiny of a consular officer.

The five posts that issued visas to the hijackers had followed the State Department's policy guidance in deciding to routinely waive interviews and adopt an interview-by-exception policy for certain categories of applicants. They did so based on the belief that these categories of applicants were "good cases," that is, they were neither intending illegal immigrants nor security risks.

For Saudi Arabia and the United Arab Emirates, consular managers, officers, and documents indicated that post policies were to consider all Saudi and Emirati citizens as "good cases" for visas because they were unlikely to overstay or illegally immigrate to the United States.²⁵ For example, according to our review of State and post records and discussions with consular officials, consular officers in Saudi Arabia issued visas to most Saudi applicants without interviewing them, requiring them to complete their applications, or providing supporting documentation. One Bureau of Consular Affairs record identified Riyadh's policy of "interview

²⁵At the time of our fieldwork, the posts in Saudi Arabia had not done any recent studies to validate their assumptions that Saudi nationals do not illegally immigrate to the United States, even though a decline in the country's economic conditions would make illegal immigration more likely. According to a U.S. embassy economic report, the government of Saudi Arabia been unable to employ most of the 150,000-200,000 new Saudi entrants into the workforce each year, as Saudi Arabia's per capita gross domestic product had declined from its peak of about \$28,600 in 1981 to less than \$7,500 by 2001. Over the same time period, the U.S. per capita gross domestic product rose from about \$28,600 to about \$36,000 (all numbers in 2001 dollars). Posts in the United Arab Emirates had also not done any recent validation studies on the return rates of Emirati nationals.

by exception” for Saudi applicants as a “best practice.”²⁶ Another record noted that the embassy in Abu Dhabi had proposed including the United Arab Emirates in the visa waiver program because of limited concerns about Emirati nationals overstaying or illegally immigrating to the United States. In contrast, the posts enforced much higher standards of evidence for most third country national applicants to prove their visa eligibility, as the posts considered them a high risk to illegally immigrate to the United States. For example, consular officers interviewed most of these applicants.

Current and former consular managers confirmed that, consistent with policies in effect prior to the attacks, the posts in Saudi Arabia and the United Arab Emirates issued visas to almost all Saudi and Emirati applicants, respectively, without interviewing them. Generally, consular officers interviewed these applicants only when their names showed up in CLASS or they had indicated on their applications that they were terrorists or had a criminal history.²⁷ The embassy in Riyadh estimated that less than 3 percent of Saudi applicants were required to undergo an interview prior to September 11. In the United Arab Emirates, the embassy in Abu Dhabi and consulate in Dubai readily issued 10-year, multiple entry business/tourist visas to Emirati nationals without requiring an interview. Consular managers also said that the posts had accepted applications from Saudi and Emirati nationals that were incomplete and lacked supporting documents. Consular managers at the embassies in Riyadh and Abu Dhabi estimated that, prior to the September attacks, less than 1 percent of Saudi and Emirati applicants, respectively, were refused visas. (See app. V for data on interview and refusal rates for applicants in Saudi Arabia before and after September 11.)

We reviewed 18 visa applications for 15 hijackers from Saudi Arabia and the United Arab Emirates.²⁸ None of these 18 applications had been completely filled out. Based on our review of these applications and our

²⁶ According to this August 2000 document, the consular section in Riyadh also applied the interview-by-exception policy to citizens of Bahrain, Kuwait, Oman, Qatar, and the United Arab Emirates.

²⁷ Visa application forms ask at least one question related to the applicant's involvement with terrorism.

²⁸ We could not review the visa applications of the remaining two Saudi and Emirati hijackers, because the posts had destroyed them in accordance with the State Department's document destruction policies in effect at that time.

discussions with consular officers, we determined that consular officers granted visas to 13 of these 15 Saudi and Emirati hijackers without an interview. Consular officers in these two countries told us that if post practices had been to review the merits of each application, they would have been more likely to call those individuals in for an interview and obtain more information on whether they had strong ties abroad and a clear, credible purpose for their visit to the United States.²⁹

According to a cable from the U.S. embassy in Berlin, the post's practice prior to July 2001 for third-country nationals studying in Germany was to consider them eligible for a visa because their studies showed that they had sufficient ties to Germany and, therefore, were not likely to stay illegally in the United States. The two hijackers who received their visas in Berlin fit this applicant category.³⁰ In July 2001, the consular section changed its practices to require that third-country national applicants, including students, provide additional evidence to prove that they were eligible for a visa.

According to State Department officials and documents, the consular officers who issued visas to the hijackers also followed established procedures for conducting CLASS name checks on all 19 hijackers when they applied for visas. The CLASS database, however, did not contain information on them at that time. According to State Department officials, the intelligence community notified State on August 23, 2001, after the hijackers' visas were issued, that it had identified two of them as possible terrorists who should not receive visas. The State Department said that it had immediately revoked the visa that was still valid and notified the Immigration and Naturalization Service.³¹ Further, for Saudi Arabia and the United Arab Emirates, consular managers and officers told us that prior to

²⁹The posts in Saudi Arabia instituted the Visa Express program for Saudi nationals in May 2001 and expanded it to all visa applicants in June 2001. This program required applicants to submit their applications to any of 10 designated travel agencies, which would then forward them for processing to the U.S. embassy in Riyadh or the consulate in Jeddah. At that stage, consular officers would review the applications. Four of the 15 Saudi hijackers received their visas after the start of the Visa Express program. The program did not affect the likelihood that Saudi applicants would be interviewed. The interview rate for Saudi nationals remained at less than 3 percent through September 10, 2001.

³⁰We could not review the visa applications for these hijackers because the post had destroyed them in accordance with the State Department's document destruction policies at that time.

³¹The visa for the other hijacker had expired on April 2, 2000.

September 11, neither the State Department nor any other U.S. agency at post or in Washington, D.C., had warned them to screen Saudi or Emirati visa applicants more closely—that is, beyond doing a CLASS check—to protect against potential terrorists. Other U.S. officials in these countries corroborated their statements. Moreover, none of the 19 hijackers came from a country that required special clearance processing or closer scrutiny for terrorism or other reasons. Thus, the consular officers believed that they had no basis for more carefully scrutinizing the hijackers' applications based on security concerns or for refusing them a visa.

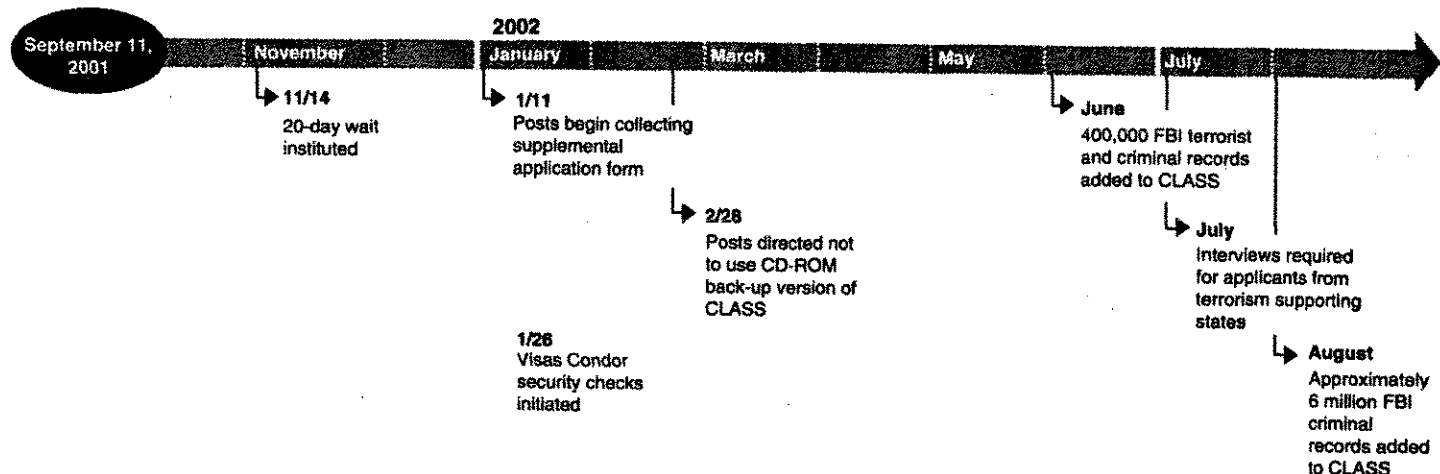
Post-September 11 Changes Enhanced Security, but Weaknesses Remain

Since September 11, 2001, the U.S. government has implemented several changes to consular operations, but weaknesses remain in visa policies and procedures that limit the effectiveness of the visa process as an antiterrorism tool. For example, some interagency security checks instituted after September 11 have not been thorough, timely, or complete. Furthermore, the State Department has not given consular officers sufficient guidance on what techniques can be used in the visa process to screen against terrorists. Wide discrepancies exist among and within posts in the areas of consular officers' understanding of their authority, the role of the visa process in ensuring national security, the practices at various overseas posts, and the implementation of the many security clearance procedures. Furthermore, two human resource concerns—shortages of consular officers and consular training that focuses on detecting intending illegal immigrants—could limit the effectiveness of visa operations in screening out terrorists. Officers at a number of posts that we visited told us that additional training in interview techniques, CLASS, and terrorism trends could help them more effectively use the visa process as an antiterrorism tool.

Procedural Changes Since September 11

Following the events of September 11, the State Department instituted a number of changes to its security check procedures, including adding two additional checks at the request of the Department of Justice—a 20-day name check and a 30-day name check. The 30-day name check is referred to as the "Visas Condor" procedure. As of August 2002, State also received almost 6.4 million criminal records from the FBI that it has added to the CLASS database. These and other changes are illustrated in figure 4. In addition, the State Department began requiring supervisory spot checks of visa issuances and tightened its policy on visa referrals.

Figure 4: Changes in State's Security Check Procedures Since September 11



Source: GAO analysis of State Department documents.

New Security Clearance Procedures Have Not Been Thorough or Timely

Intended as an interim measure, the 20-day name check went into effect on November 14, 2001, for all male visa applicants of certain national groups between the ages of 16 and 45. When the consular officer attempts to issue a visa to such an applicant, the computer system automatically places a hold on that applicant's record, so that the consular officer cannot issue a visa before the 20 days have elapsed. The information on the applicant is then electronically transmitted from the State Department to the FBI for the name check itself. On the twenty-first day, the computer automatically unlocks these applicant cases, and the computer system prompts the consular officer to make a decision. If the consular officer has not received a negative response from Washington on an applicant, then he or she is permitted to issue the visa.

The State Department instituted the 30-day name check, called Visas Condor, in late January 2002. Consular officers apply Visas Condor procedures to those applicants who require a 20-day name check and who fit certain additional classified criteria.³² Local staff prepare Condor cables for these applicants and transmit them back to the State Department. Until mid-September 2002, the State Department then sent the cables to the FBI

³²As of September 23, 2002, these classified criteria were under revision.

and the Central Intelligence Agency (CIA) for name checks.³³ The initial Condor process allowed the consular officer to issue the visa after 30 days if he or she had not received negative information on the applicant from any of these agencies. The supplemental visa application form, instituted in mid-January 2002, provides additional information on such things as the applicant's travel and educational history, employer information, and military service to aid the consular officers' assessment of whether the applicant requires a Condor or other security check. All male applicants between the ages of 16 and 45 must fill out and submit the supplemental form along with the usual visa application.

Until recently, these two new security checks had not been fully implemented. According to officials from the Departments of State and Justice, including officials from the FBI, as of August 1, 2002, neither the FBI nor any other federal agency had done additional name checks to supplement the CLASS checks on the visa applicants subject to the 20-day waiting period. At that point, the FBI's National Name Check Program, hereafter referred to as the name check unit, and the Foreign Terrorist Tracking Task Force³⁴ began conducting name checks on a sample of these visa applicants. These assessments were to determine whether there is a need to retain and fully implement the 20-day requirement.

Further, according to FBI officials, including the FBI's Deputy Assistant Director of the Records Management Division and the chief of the name check unit, the FBI did not systematically conduct the Visas Condor check from January through April 2002. They said that analysts in the FBI's operational sections did not always forward Visas Condor cables to the name check unit for the security checks. As of mid-April, the FBI was still developing internal procedures to ensure that the name check unit received all Visas Condor cables. FBI officials did not have data on how many Visas Condor checks the name check unit had completed as of mid-April, but they estimated the unit had completed only a few of these checks. In late

³³The State Department also sends the Visas Condor cables to the Department of Defense and the National Security Agency for their information.

³⁴The President established the Foreign Terrorist Tracking Task Force, an interagency group under the auspices of the Department of Justice, on October 30, 2001. The task force was to ensure that, to the maximum extent permitted by law, federal agencies coordinate programs to (1) deny entry into the United States of aliens associated with, suspected of being engaged in, or supporting terrorist activity; and (2) locate, detain, prosecute, or deport any such aliens already present in the United States. The task force does not have legal authority to adjudicate visa applications or applications for immigration benefits.

April, the Foreign Terrorist Tracking Task Force assumed primary responsibility for the FBI's Visas Condor name checks. According to the chief of the FBI's name check unit and a task force official, the task force faced a backlog of at least 8,000 unchecked cables when it started doing the Visas Condor and other security checks for the FBI in mid-April.

Of the estimated 38,000 Condor cables processed by August 1, 2002, the task force had identified about 280 visa applicants who should not receive a visa under the INA's terrorism provision.³⁵ The task force either believed these applicants are suspected terrorists, or, in the majority of the cases, needed additional information to determine the applicant's true identity. The State Department received the refusal recommendation for about 200 of these applicants after the 30-day hold had expired, according to the State Department official responsible for interagency coordination of these security checks. By that time, the posts had already issued the visas to the applicants. According to a senior State Department official, the department revoked the visas in these cases as a prudent measure and notified the Immigration and Naturalization Service of this action. During our fieldwork, we noted that at least four posts independently decided to extend the time frame for the Visas Condor name checks to prevent visas from being inadvertently issued to ineligible applicants.

In July 2002, the FBI and the State Department changed their Visas Condor name check procedures. The FBI streamlined its internal procedures for providing Visas Condor responses to the State Department and moved the primary responsibility for Condor name checks from the Foreign Terrorist Tracking Task Force to the FBI's name check unit. The State Department eliminated the 30-day waiting period for applicants subject to Visas Condor checks.³⁶ Posts must now wait for an affirmative response from the State Department before issuing a visa to any applicant who meets the Visas Condor criteria. According to a State Department official, the consular officer now refuses any visa applicant who requires this clearance on the grounds that the application is incomplete or otherwise inadequate. The consular officer then sends a Visas Condor cable to Washington and

³⁵Through various security checks, the task force as of August 1, 2002, had identified a total of 567 visa applicants who may pose a threat to national security. About half of the 567 applicants were identified through the Visas Condor name check, with the remaining applicants identified through other special security checks. The task force recommended to the State Department that all of these applicants should be denied a visa.

³⁶As of late September 2002, the 20-day wait continued to apply.

notifies the applicant once the officer receives word back on that applicant's name check. This official told us that in general, the clearance process often took longer than 30 days because State had to receive and record feedback from both the CIA and the FBI on all Visas Condor applicants.

In mid-September 2002, State Department, the CIA, and the Justice Department again changed the Condor name check procedures. Specifically, the FBI became the primary agency for doing the name checks and clearing Visas Condor cables, and the CIA started doing name checks for selected Condor applicants rather than all of them. According to CIA and Justice Department officials, under the new procedures, the FBI's name check unit conducts the initial Condor name check, running the applicant's information against their databases at headquarters and, in some cases, at the Foreign Terrorist Tracking Task Force. If these checks result in a possible match, then the FBI sends the information on that visa applicant to the State Department, who then forwards it to the CIA for a name check against the agency's databases. With these new procedures, the State Department hopes to reduce the review time for Condor applicants that have no FBI record to 10 days or less.

The Visas Condor security check applies only to visas adjudicated after January 2002. The check does not apply to previously issued visas. We note that visas from many countries are valid for extended periods of time. (See app. VI for the visa validity periods for selected countries).

State and Justice Disagree on Evidence Needed to Deny a Visa on Terrorism Grounds

The Departments of Justice and State have different views on how to apply the INA's terrorism provision, section 212(a)(3)(B), to visa applicants whose names have resulted in a possible match against FBI or Foreign Terrorist Tracking Task Force databases. In July 2002, an Associate Deputy Attorney General told us that the State Department applies too high a standard of evidence to deny a visa under the INA's terrorism provision.³⁷ According to this official, the Justice Department believes that the Visas Condor name checks provided sufficient evidence to deny a visa to these applicants under the INA's terrorism provision, but the State Department does not agree. According to the State Department, it requires specific

³⁷If the State Department denies a visa on terrorism grounds, the applicant's ineligibility would remain in CLASS until the applicant reaches the age of 90. Under these circumstances, the ineligible applicant could not obtain a visa unless granted a waiver by the Immigration and Naturalization Service.

evidence to prove an applicant ineligible under this provision. In a June 10, 2002, letter to the Deputy Attorney General, the Deputy Secretary of State said that consular officers must know the specific actions or associations that may render an applicant ineligible in order to legally deny a visa. As of August 1, 2002, this dispute applied to 567 visa applicants whose names matched information in Foreign Terrorist Tracking Task Force databases.

The State Department's handling of visa applicants who match records in TIPOFF, the department's watchlist of known or suspected terrorists that is included in CLASS, illustrates how the State Department has applied the law. According to the State Department's fiscal year 2003 Congressional Presentation Document, 178 applicants in fiscal year 2001 had names and biographical data that were true matches to information in TIPOFF—a watchlist with a relatively low standard for adding names and other biographic data. Of these true matches, the State Department denied visas to 81 applicants under the terrorism provision but did not do so for 79 applicants, because it determined there was insufficient information linking them to terrorism.³⁸ According to a State Department official, these visas were issued when the department found that insufficient information existed to deny a visa under INA section 212(a)(3)(B).

The Justice Department, in its comments on our report, said that it does not share the State Department's view of the law for several reasons. Most importantly, the Justice Department believes that the law presumes a visa applicant is inadmissible and places the burden of proof on the applicant to establish his admissibility. Therefore, a consular officer need not have specific evidence that the applicant participated in terrorist activities or associations to justify a visa denial. Further, the Justice Department believes that it will often be impossible to know for sure whether a visa applicant is indeed the same person contained in the relevant databases, even after all information on the applicant is shared between the two departments. In that situation, the department thinks it appropriate to proceed cautiously and deny a visa on the theory that the name check match does provide the consular officer a "reasonable ground to believe" that the applicant presents a threat to national security and is, therefore, ineligible for admission.

³⁸The remaining 18 applicants abandoned or withdrew their applications.

More Information Added to CLASS

The State Department has stressed that it must have the best interagency information available on persons who are potential security risks in order to make good visa decisions. In June 2002, the State Department added about 400,000 records from an FBI database, known as the National Crime Information Center, to the CLASS system for consular officers to use in adjudicating visas. This batch included 7,000 records from the Violent Gang and Terrorist Organization File. According to a State Department official, as of August 15, 2002, the department had incorporated an additional 6 million FBI records into CLASS, which almost doubled the amount of information in the system.

Since September 11, the State Department's TIPOFF watchlist office³⁰ has reported a significant increase in the number of names that other agencies have added to the terrorist watchlist. As of August 14, 2002, this watchlist had increased by 17,899 records to 79,373 total records, with much of the new information coming from the CIA and relatively little information from the FBI and the Department of Defense. After assessing the records' relevance and completeness, the watchlist unit incorporated about 88 percent of them into CLASS. CLASS now contains about 12 million records.

Further, effective late February 2002, the State Department changed its policy on the use of the Distributed Namecheck System as the backup to CLASS. The department had relied on this CD-ROM-based system when consular officers were unable to access CLASS because it was temporarily not operational. However, the backup system did not always contain updates of names that had been recently added to CLASS. Because of this, the State Department instructed consular officers that they can no longer use this backup system for the name check. Instead, they must wait for CLASS to come back up in order to conduct name checks before issuing a visa. The State Department has developed a new Backup Namecheck System, which will provide a more robust name check and more timely data. This new Backup Namecheck System is currently scheduled for deployment to all posts by October 2002.

CLASS Has Technical Limitations

The CLASS database has limitations in helping consular officers screen out terrorists due to system idiosyncrasies, inaccurate applicant information on travel documents, and Arabic naming customs and patterns. For example, according to a State Department official, the system may not

³⁰This unit is responsible for receiving information from other agencies on potential terrorists and adding the names to CLASS.

conduct a comprehensive name search—it may overlook CLASS records on suspected terrorists that have missing biographical data because they were developed from incomplete intelligence reports. In addition, when the biographical data do exist, they may inadvertently be entered inaccurately into the system. For example, the State Department recently entered into CLASS the names and biographical information for the 19 hijackers who carried out the September 11 attacks to ensure that their passports and visas are not used again to enter the United States. Of these new entries, at least two contain inaccuracies.⁴⁰ Moreover, travel documents of visa applicants may contain inaccurate biographical data, either by mistake, by fraud, or by government decree.⁴¹ Finally, citizens of Arab countries have the common practice of using four or five official names, with some names being extremely common. All of these factors led to difficulties at all the posts we visited in identifying possible name matches in CLASS.

New Interview Requirements for Applicants from State Sponsors of Terrorism

In response to a provision in the Enhanced Border Security and Visa Entry Reform Act of 2002,⁴² the State Department in July 2002 began requiring interviews for all applicants over the age of 16 who are from one of the seven countries designated as state sponsors of terrorism—Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria. In addition, all of these applicants must complete a supplemental visa application form and are subject to a Visas Condor clearance before the consular officer can issue a visa. This provision requires the Secretary of State, in consultation with the Attorney General and the heads of other appropriate U.S. agencies, to determine that these applicants do not pose a threat to the safety or security of the United States before issuing them a visa. According to State Department procedures, consular officers have the discretion to waive the interview requirement for diplomats, government officials, and

⁴⁰For example, when we reviewed the CLASS entries for the two Emirati hijackers in May 2002, the date of birth of one, Fayez Ahmed Banihammad, appeared in CLASS as 19 May 1977 instead of 19 Mar 1977. The last name of the other Emirati hijacker, Marwan Al-Shehhi, was spelled in CLASS as “Al-Shehri.” A consular officer could override either of these close matches by noting, “Name and/or date of birth are different.” In commenting on a draft of the report, the State Department said that it had corrected the lookout entry for Banihammad and that Al Shehhi’s name was already spelled the same in CLASS and in his visa.

⁴¹The United Arab Emirates, in an attempt to prevent discrimination, permits naturalized citizens to officially alter their place of birth information. The algorithms that CLASS uses rely heavily on place of birth information.

⁴²P.L. 107-173.

representatives to and employees of international organizations from these countries.

Changes to Post Referrals and Visa Reviews

On May 18, 2002, the State Department announced a number of changes to strengthen posts' existing visa referral systems, under which U.S. government employees may recommend a visa for someone of official interest to the U.S. government who is well and favorably known to them. These changes included creating new terms for different types of referrals, as well as requiring posts to use standardized forms and establish a tracking system for referrals. The department also reaffirmed the essential requirements of referral systems, including the need of a signature from the agency or section head. Through these measures, the State Department intends to protect the integrity of the visa referral system.

On June 8, 2002, the State Department added a provision to its *Foreign Affairs Manual* requiring the nonimmigrant visa chief, the visa chief, or the consular section chief to spot-check approved nonimmigrant visa applications. Before this announcement, the official supervisory review policy required only that consular managers review all visa refusals and spot check compliance with CLASS name checks. While still not requiring a review of all issuances, this change may address pre-September 11 concerns that the supervisory review policy encouraged officers to issue visas in order to avoid managerial scrutiny.

Lack of Clear Guidance Resulted in Wide Discrepancies Among Posts

Although the State Department had changed selected procedures and announced plans to examine visa operations worldwide, it had not issued comprehensive policy guidance to posts as of late July 2002, regarding how consular officers should react to the heightened border security concerns following the September 11 attacks. Our fieldwork indicated that the lack of headquarters' guidance has caused uncertainty among consular personnel overseas.

In the absence of clear policy guidance, consular staff overseas and at the State Department held different views on balancing customer service and national security in the visa process. For example, consular officers held different opinions about whether they should use INA section 214(b) to refuse visas to questionable applicants, that is, those who either did not appear credible or who could not convince them of the purpose of their visit, regardless of the applicants' income or ties to a residence abroad. Many consular officers told us they were using the provision for this purpose. Consular managers and individual consular officers whom we

interviewed differed on whether consular officers should be using INA section 214(b) to screen applicants in this manner. Moreover, the *Foreign Affairs Manual* provided conflicting guidance on the factors to be assessed in determining whether an applicant qualifies for a visa. In one section, the policy manual said that consular officers must assess, among other things, whether the applicant is seeking admission to the United States for the sole purpose of engaging in legitimate activities related to business or pleasure. In another section, this manual stated that travel agencies were to base the applicant screening processes largely upon financial factors. If the travel agency was reasonably satisfied that the traveler had the means to purchase a tour "package," there was to be little further evaluation of the application's qualifications for receiving a nonimmigrant visa.⁴³

Consular management at the posts we visited responded to the September 11 attacks by changing post-specific visa policies in widely varying ways. Many senior consular managers and junior officers, particularly in the five posts that issued visas to the September 11 hijackers, said that national security had become their primary concern in reviewing visa applications. At those five posts, consular management changed their policies and procedures for issuing visas immediately after September 11. For example, in Saudi Arabia and the United Arab Emirates, consular officers began more rigorously scrutinizing citizens of those countries who were applying for visas, including screening them to determine whether they were intending immigrants. In doing so, according to data from the consular section in Riyadh and consular managers, they interviewed many more applicants from those two countries and also started to ensure that Saudi and Emirati applicants had completely filled out their visa applications, a requirement they had not enforced before September 11. In late July 2002, the posts in Saudi Arabia changed their visa interview policies to require interviews for all visa applicants between the ages of 12 and 70. They also eliminated the role of travel agencies in collecting and transmitting visa applications and ended the Visa Express program for expediting visa applications.

Consular staff in other posts we visited, such as in Cairo, Tunis, and Jakarta, noted that they, too, are placing more emphasis on preventing terrorism in their reviews of visa applications. For example, at one post,

⁴³The State Department revised this section of the *Foreign Affairs Manual* on September 18, 2002, thereby removing this language from the policy guidance and emphasizing that no visa adjudication authority may be delegated to any third party entity.

consular officers reported that they had broadened their definition of what constitutes a close CLASS match, that is, a close but not exact match of an applicant's name or date of birth with the name and date of birth of a potential terrorist included in CLASS. Now they are much more likely to ask for a security advisory opinion from the State Department in deciding whether to issue a visa to an applicant with a close match.

On the other hand, consular managers whom we interviewed at the U.S. embassy in London and the U.S. consulate in Frankfurt were implementing the new security clearance procedures but had not received specific guidance from the State Department on how much emphasis to place on security in visa operations. Thus, the posts continued to operate in accordance with the department's best practices, which included a policy of waiving interviews for certain categories of applicants whom posts believe will not illegally immigrate to the United States. Furthermore, consular officers in London told us that they were uncomfortable because they were not interviewing more applicants. In Ottawa, Canada, the post's refusal rates for third-country national applicants decreased from about 29 percent in June 2001 to about 12 percent in October 2001, after the post had received a new consular section chief. In late January 2002, the new chief told us that she considered the post to be a lower fraud risk than did her predecessor. She, therefore, held a more liberal policy for issuing visas and placed a lower priority on fraud detection.

Moreover, at several posts we visited, consular officers held differing views on whether they had the authority to issue a visa for less than the maximum validity period. The *Foreign Affairs Manual* states that consular officers have the discretion to issue a visa for less than the maximum time allowed, but the manual encourages them to issue a visa for the longest time possible. During our fieldwork, we found widely varying opinions within and among posts as to the amount of discretion allowed to consular officers in this area. In the United Arab Emirates, home to two of the September 11 hijackers, consular officers in Abu Dhabi expressed concern that they were required to issue visas to all Emirati nationals for the full 10-year term; however, a consular officer in Dubai told us that he routinely limits the period of visa validity for Emirati nationals, based on his assessment of each applicant's situation. This officer cited the example of issuing a visa to a 15-year old boy to travel to the United States on vacation with his parents. For this boy, the consular officer would limit the visa to 3 years rather than the maximum of 10, since the officer would not know whether the applicant would qualify for a visa as an adult. In Tunis, one of the consular officers routinely issued visas for periods less than full

validity, while the other believed that the State Department's policy did not allow that action. On September 23, 2002, the State Department said that it is currently revising instructions to posts on this matter and intends to change previous guidance that visas should, in most cases, be issued for the maximum validity period.

Senior consular managers at three posts we visited believed that the State Department had not provided them with comprehensive guidance on how to balance security concerns or new procedures with the need to promote legitimate travel to the United States. They told us that it would be useful to have better guidance on these matters. Further, at a fourth post, two senior consular managers held different policies on how to balance customer service and national security in their post's visa operations.

Finally, many consular officers overseas told us that they had difficulties in implementing the State Department's various security clearance procedures for visa applicants. Consular managers at all the posts we visited⁴⁴ told us that they received minimal guidance from the department on how to coordinate the 20-day and 30-day clearances so that they would not inadvertently issue a visa to an applicant subject to both clearances before the end of the 30-day waiting period. In the absence of guidance from the State Department, the posts we visited had created and refined ad hoc procedures, often in consultation with one another. In February 2002, the consular section in Riyadh sent a cable to the State Department asking for a clarification of this matter; however, as of the time of our fieldwork, the department had not responded to the request. Further, some posts that processed visa applicants who were subject to multiple pre- and post-September 11 security check requirements had difficulty in determining which check, if any, takes precedence. One post completed only post-September 11 security checks, while other posts completed all checks that applied to an individual applicant.

The State Department, in its comments on our report, said that the guidance provided to the field has historically emphasized operational flexibility to ensure that visa operations are as effective and efficient as possible based on local circumstances. The department recognized that the events of September 11 changed this cost-benefit calculus and now understands that more detailed centralized guidance—and, conversely, less

⁴⁴We visited the U.S. embassy in Ottawa and the consulate in Montreal before the 30-day wait took effect.

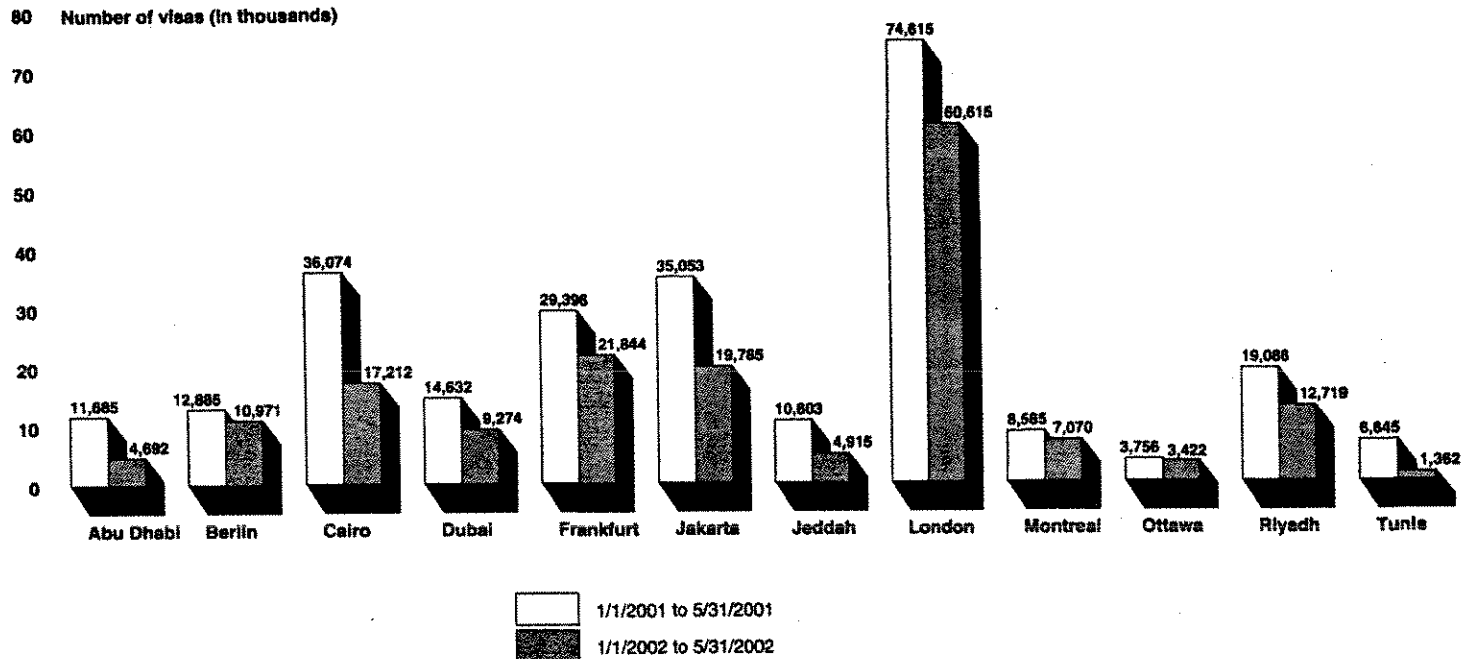
flexibility at the field level—is called for. The State Department noted that it plans to (1) issue new rules that will eliminate much of the discretion consular officers have in such things as waiving interviews of visa applicants and using travel agencies to process visa applications, (2) reduce the period of maximum validity of nonimmigrant visas from 10 years to 5 years, and (3) redraft department guidance on when consular officers can issue less-than-full validity visas.

Despite Drop in Applications, Staffing Limitations Remain a Concern

Since September 11, the number of nonimmigrant visa applications has dropped worldwide. At some posts, this decrease in demand has allowed consular officers to handle the increased workload associated with new security clearance procedures and additional and lengthier interviews of visa applicants within the current staffing level. At other posts, according to State Department officials, the demand for visas combined with increased workload per visa applicant still exceeds available staff, as evidenced by the waiting time for a visa appointment and in overtime by consular staff.

The State Department's data show that the number of visa cases decreased by about 16 percent worldwide from January 1, 2002, through May 31, 2002, compared with a year earlier. At some posts, the caseload dropped by more than 50 percent from pre-September 11 levels during that same period (see fig. 5). As of May 2002, consular officers in the United Arab Emirates were interviewing almost all applicants; they could do so because visa cases at post had declined by almost 50 percent. Consular officers in Cairo, Tunis, and Jeddah also told us the reduced number of applications meant they could spend more time interviewing applicants. In Cairo, one officer reported that after September 11, he had more time to develop information in interviews and felt he was doing a more thorough job of screening applicants.

Figure 5: Nonimmigrant Visa Caseload for Selected Posts, January 1, 2001-May 31, 2001, and January 1, 2002-May 31, 2002



Note: Caseload consists of visa issuances and refusals.

Source: State Department data.

Several consular managers at the posts we visited reported that they would not be able to handle an increase in workload at their existing staff levels. Although the posts could manage existing workload with current staffing, these officials said that they would need more staff if they faced an increase in either security clearance procedures or visa applications. In July 2002, when the posts in Saudi Arabia decided to start interviewing all visa applicants between the ages of 12 and 70, the State Department recognized that the posts would require more staff to handle the increased workload.

We note that through its Diplomatic Readiness Initiative plan, the State Department aims to hire an additional 1,158 Foreign and Civil Service employees above the normal attrition rate by fiscal year 2004 and that some of these new staff will be assigned to consular positions. In fiscal year 2002,

the department established 55 new consular positions,⁴⁵ in addition to the 81 new consular positions that it had established over the previous 2 years. Moreover, through the Diplomatic Readiness Initiative, the State Department plans to phase out the use of consular associates to adjudicate visas and replace them with about 165 Foreign Service consular officers over a 3-year period.

Consular Training Changes Have Been Limited

As of July 2002, training for new consular officers remained focused on detecting intending illegal immigrants through the visa process, with little training given on detecting possible terrorists. In January, an official from the Foreign Service Institute, the training arm for Foreign Service officers, told us that the institute had not made any substantive changes in consular training since September 11. When we spoke with this official again in July, he said that the institute was considering some minor changes to the nonimmigrant visa curriculum. These changes would increase the nonimmigrant visa module from 7 days to approximately 8 days and would place more emphasis on interviewing skills. On September 10, 2002, State added a session on visa fraud and accountability to the basic consular course. Many consular officers with whom we met overseas believed that more comprehensive training could help them detect inadmissible applicants, particularly in the areas of interviewing techniques, the CLASS name check system, and terrorism trends.

Many consular officers whom we interviewed wanted more training in how to interview visa applicants effectively. Some officers thought that if they were trained to ask more interrogative questions they might be better able to identify inadmissible applicants. One officer in London said he wanted to learn how to open interviews, how to extract information from the applicant, and how to close interviews.

Some consular officers with whom we spoke wanted more training in the CLASS name check system, particularly in how the system's Arabic algorithm works, so that they could better discern what constitutes a true match between the applicant and the names found by CLASS. Officers in Cairo, for example, received possible name matches, also known as "hits," for 75 percent of applicants. They felt that a better understanding of how CLASS operates would make it easier to know when the visa applicant's

⁴⁵State funded these positions using fees it collected from applicants for machine-readable visas.

name and biographical data constituted a match with the information in CLASS. In fact, the State Department began offering an advanced course in CLASS name checks in January 2002. Consular officers in Cairo and Abu Dhabi who had taken the course said that it greatly helped in understanding CLASS hits and system operations. The department plans to offer the course seven times in 2002 and at least 10 times in 2003, primarily to consular officers who will use the knowledge gained from the course in follow-on visa assignments. As of September 23, 2002, the State Department had trained 70 students in this course and planned to train 120 more in each of the next 2 fiscal years.

Several consular officers told us that they would like to receive briefings on profiles of terrorist groups operating locally and globally so that they could attempt to detect terrorists if these operatives applied for a visa. They believed that information on terrorism trends and related antifraud measures could provide important background in the visa process to screen out terrorists. Two consular officers in London, a post that processed applicants from more than 180 countries, said that they would like intelligence officers at the embassy to conduct these briefings to alert them to terrorists' travel patterns and behaviors. At other posts, consular officers told us that the fraud detection training they had received before going to their first visa post and while at the post was limited. According to terrorism experts and the State Department's Fraud Prevention training course, some terrorists make use of fraudulent documents. Therefore, knowledge of antifraud techniques is useful for helping consular officers detect terrorists and criminals, as well as intending immigrants, who are applying for nonimmigrant visas.

Some consular officers also felt that they would be better prepared to make visa adjudications if they had more knowledge about the local culture, conditions, and language of the country in which they are posted. For example, an officer in Riyadh said that post-specific area studies in the behavior, culture, and economic situation of the local population would have been useful to her in evaluating visa applicants. This officer suggested that a new officer's tenure overlap with that of departing officers so that this type of local knowledge could be passed along. Furthermore, not all consular officers are proficient enough in their post's language to hold interviews with applicants. Cairo reported that 90 percent of interviews are conducted in Arabic, yet most officers lacked strong Arabic skills. In the United Arab Emirates, the State Department's consular officers relied on the Arabic language skills of local staff at post, as none of the visa positions require Arabic. Moreover, effective in August 2002, the State Department

changed the consular section staffing in Jeddah to replace a 2-year Arabic language-designated position with two 1-year non-language designated positions.

In late September 2002, the State Department said that it is adding a number of new elements to the basic consular training course. It is collaborating with FBI officials to develop a counterterrorism presentation that the bureau would give to course participants, planning to add the session to the course by the end of October 2002. The State Department is also developing a new session on interviewing techniques to give students time to work on and discuss how to conduct effective visa interviews. The department believes this new session will add substantially to the comfort level and effectiveness of newly graduated first tour consular officers.

State Is Reexamining Visa Operations

The State Department has acknowledged the need to strengthen the visa process. In mid-July 2002, the Secretary of State said the visa process needed revision, noting that the department is examining consular operations to enhance their effectiveness. In response to a provision in the USA PATRIOT Act, the State Department, in conjunction with the Attorney General and the National Institute of Standards and Technology, is studying the potential of biometric technologies in screening visa applicants. The biometric technologies under consideration, facial recognition and fingerprints, would be used to conduct background checks on and confirm the identity of visa applicants and to ensure that they had not received a visa under a different name. As part of this effort, the State Department in March 2002 required all posts to start electronically capturing photos of refused visa applicants. Prior to this, the department had only required posts to capture photos of applicants who had received a visa. The Departments of State and Justice, along with the National Institute of Standards and Technology, are scheduled to issue a joint report on the development, implementation, efficacy, and privacy implications of the proposed biometric technologies by November 2002.

Moreover, the State Department's Inspector General initiated a worldwide review of visa operations in July 2002. As part of this review, the Office of the Inspector General sent questionnaires to all posts in mid-August 2002. These questionnaires asked them about terrorist threat information sharing and posts' policies on interviewing visa applicants and using travel agencies to complete and submit visa applications. The Office of the Inspector General plans to issue a report on these matters by late November 2002.

The State Department said on September 23, 2002, that it is continuing to evaluate all aspects of the visa process. Further, it will expand its coordination with the homeland security community to develop additional procedures and guidelines to aid in screening out potential terrorists. For example, it initiated efforts to identify and reassess categories of visas issued prior to the implementation of the new security checks. State plans to recheck those applicants in CLASS and will ask other agencies if they want to review outstanding visas as well.

Conclusions

The visa process can be an important tool to keep potential terrorists from entering the United States. While changes to the visa process have been implemented since the September 11 attacks, weaknesses remain that limit the effectiveness of the visa process as an antiterrorism tool. The State Department needs to improve its implementation of the visa process to improve its effectiveness and consistency among posts. A lack of clear guidance has resulted in wide discrepancies among posts in the level of scrutiny of visa applications and in factors used to refuse visas to questionable applicants. Consular officers need clear statements of policies and priorities to guide them in their risk assessments of visa applicants and in determining who should and who should not receive visas. In addition, human resource limitations are a concern, as some consular sections may need more staff if the number of visa applicants returns to the levels that were common prior to September 11. Furthermore, consular training has not incorporated the tools to identify potential terrorists. Action is also needed at the interagency level as key agencies disagree on the information needed to deny a visa on terrorism grounds and headquarters' security checks of selected visa applicants have not been completed in a timely fashion.

Recommendations for Executive Action

We are making recommendations to strengthen the visa process as an antiterrorism tool. These recommendations are being directed to the Secretary of State, who is currently responsible for visa policy and operations, and to the Assistant to the President for Homeland Security, because of his current role in promoting and coordinating homeland security across the federal government. While we recognize that the establishment of the proposed Department of Homeland Security could affect the role and responsibilities of various entities involved in visa processing, the actions we are recommending focus on fundamental operational issues that need to be urgently addressed.

To strengthen the risk-based approach to visa decision-making, we recommend that the Secretary of State, in consultation with appropriate agencies, develop

- a clear policy on the priority attached to addressing national security concerns through the visa process, including how this priority should be balanced with the desire to facilitate legitimate travel, provide timely customer service, and manage workload; and
- more comprehensive, risk-based guidelines and standards on how consular officers should use the visa process as a screen against potential terrorists, including the factors to consider in assessing risks, the level of scrutiny of visa applications, the information needed to approve and deny a visa, and the degree of discretion to waive interviews and other visa checks and to limit the duration of visa validity.

Based on the new policy and guidelines, we also recommend that the Secretary of State

- perform a fundamental reassessment of staffing and language skill requirements for visa operations in light of the current and the anticipated future number of visa applications and, if appropriate, request additional human resources to ensure that consular sections have adequate staff with necessary language skills; and
- revamp and expand consular training courses to place more emphasis on detecting potential terrorists by improved interview techniques, greater recognition of fraudulent documents, greater understanding of terrorism trends and local culture and conditions, and better utilization of the CLASS name check system.

To address visa issues requiring coordination and actions across several agencies, we recommend that the Assistant to the President for Homeland Security coordinate with the appropriate agencies to

- establish governmentwide guidelines on the level of evidence needed to deny a visa on terrorism grounds under INA section 212(a)(3)(B);
- reassess interagency headquarters' security checks on visa applicants to verify that all the checks are necessary and to ensure that appropriate checks are carried out promptly, and provide clear guidance to overseas

posts and headquarters agencies on their roles in conducting these checks;

- consider reassessing, on an interagency basis, visas issued before the implementation of new security checks, particularly for selected categories of persons from selected countries who may pose security concerns;
- reexamine visa operations on a regular basis to ensure that the operations are effectively contributing to the overall national strategy for homeland security and that they reflect changes in the security environment, the availability of new information technologies, and organizational changes that may be implemented if a Department of Homeland Security is established; and
- ensure that law enforcement and intelligence agencies promptly provide information to the State Department on persons who may pose a security risk and, therefore, should not receive a visa.

Agency Comments and Our Evaluation

We provided a draft of this report to the Office of Homeland Security and the Departments of State and Justice for their comment. The Office of Homeland Security did not comment on the report. The comments of the Departments of State and Justice, along with our responses to specific points, are reprinted in appendixes VII and VIII, respectively.

The State Department said that it found the report to be thorough and balanced, noting that the recommendations would be useful to their ongoing reexamination of visa processes and procedures. The State Department indicated it concurred with or was taking steps to implement all of our recommendations. The department said it would work with Congress to obtain legislative changes, as necessary, to permit it to take the steps it believes are necessary to incorporate all known risk assessments into the visa process as a means of furthering national security objectives. The State Department also provided a number of technical comments, which we have incorporated throughout the report, where appropriate.

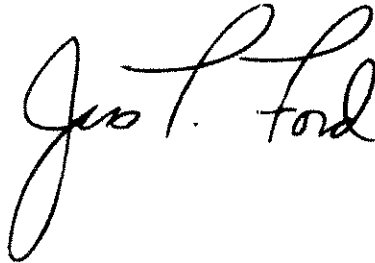
The Department of Justice did not comment on the report's recommendations. Instead, the department limited its comments to two issues. First, the department elaborated upon the evidentiary standard for adjudicating visa applications by individuals who may present a risk to national security. We incorporated the substance of these arguments into

the report. Second, the department said that our report failed to discuss fully certain visa applicants screened by the Foreign Terrorist Tracking Task Force and expressed concern about several statements regarding the task force's and the FBI's processes for handling Visas Condor cables, as well as their timeliness. We have modified relevant sections in the report to update information and clarify our points on these matters.

We are sending copies of this report to interested congressional committees and to the Assistant to the President for Homeland Security, the Secretary of State, the Attorney General, and the Director of the FBI. We also will make copies available to others upon request.

If you or your staff have any questions concerning this report, please call me at (202) 512-4128. Additional GAO contacts and staff acknowledgments are listed in appendix IX.

Sincerely yours,

A handwritten signature in black ink, reading "Jess T. Ford". The signature is written in a cursive style with a large, looping "J" and "F".

Jess T. Ford, Director
International Affairs and Trade